IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1593 OF 2003

IN

EXECUTION APPLICATION NO. 244 OF 2002

IN

(AWARD DATED 5TH JUNE, 2001)

Union Bank of India .. Applicant.

vs.

M/s. Tolani Shipping Co.

Ltd., .. Plaintiffs.

And

M/s. Rainbow Corporation

Ltd., .. Defendants.

Mr. H. Toor i/by N.I. Bakali for applicants.

Mr. R.S. Jaisinghani with Mr. Basant Tilokani

for J.T. Creditor.

CORAM : S.U.KAMDAR, J.

DATE : 15th MARCH, 2005.

P.C.

. The present chamber summons has been taken out by the applicant Union Bank of India, inter alia claiming mortgage in respect of two properties,

namely, (i) Flat No.G-1 of the building No. 2 on the ground floor of the building known as Esha Apartments standing on property bearing C.S. No. 868 and 1/868 of Worli Division, situated at Campa Cola Compound, B.G. Kher Marg, Worli, Mumbai-400 018 and (ii) Office premises on the 12th floor, admeasuring about 1180 sq. ft. carpet area, in the building known as Atlanta Premises Co-operative Society Ltd., constructed on plot of land bearing No. 209 of Block No. III, Backbay Reclamation Estate, bearing C.S. No. 1950, Nariman Point, Mumbai-400 021. The applicants are claiming to be the mortgagee in respect of the aforesaid two properties. The plaintiff has an award-decree in his favour and has put the said award decree in execution.

2. It is an admitted position before me that in respect of the claim of the applicant herein proceedings are initiated before the Debt Recovery Tribunal under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - and a recovery certificate has been issued in favour of the petitioner. In view of the judgment of the Allahabad Bank vs. Canara Bank reported in (2001) 4 SCC 406 all claims even in execution must be made before the recovery officer of Debt Recovery Tribunal under the said Act. According to the learned counsel for the plaintiff there is no

question of referring the matter to the Debt Recovery Tribunal and/or to the Recovery Officer for execution of the recovery certificate because according to the plaintiff the decree has to be executed in this Court since the said decree has been obtained by him in an arbitration proceedings and award decree is to be executed by this Court. In support of his contention he relied upon paragraphs 13 and 25 of the said judgement of Allahabad Bank vs. Canara Bank (supra) and contends that only the cases where the subject matter of the properties are mortgaged in favour of the bank that proceedings alone can be referred to the Recovery Officer. According to him, the decree passed in favour of the plaintiff in the present proceedings cannot be transferred or executed by the recovery officer. He has further relied upon the judgment of the Apex Court in the case of Kabidi Venku Sah, v. Syed Abdul Hai and Anothr reported in AIR 1984 SC 117 to contend that even if there is a mortgage in favour of the plaintiff still decree has to be executed by this Court as mortgagee is not in actual or constructive possession of the property as on the date of the judgment. In my opinion, the aforesaid judgment of the Apex court has no application. In view of the judgment of the Apex Court in the case of Allahabad Bank vs. Canara Bank (supra) and in view of the provisions of section 31 read with section 34 (1) of Recovery of Debts Due to Banks and

Financial Institutions Act, 1993 the Tribunal is given exclusive jurisdiction by virtue of non-obstante clause. The learned Single Judge of this Court in Chamber Summons No. 1276 of 2004 in Execution Application No. 131 of 2004 has considered the aforesaid issue and has also considered the judgment of the Apex Court in the case of Kabidi Venku Sah (supra) and has come to the conclusion that in view of the judgment of the Apex Court in Allahabad Bank (supra) this Court will have no jurisdiction to execute the decree but the recovery officer alone has jurisdiction It will be open for the plaintiff to raise the contention before the Debt Recovery Tribunal and the Recovery Officer pertaining to the validity or otherwise about the mortgage claim by the applicant herein. If such a claim is raised, then the same will be adjudicated by the Debt Recovery Tribunal and/or the Recovery Officer, as the case may be, in accordance with law and accordingly the amount will be disbursed to the parties concerned.

3. Chamber Summons disposed of accordingly. No order as to costs.